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10/092,067

03/05/2002

Machelle Daniels

Y01-066

7848

7590

06/10/2004

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EXAMINER

MAIORINO, ROZ

ART UNIT

PAPER NUMBER

3763

DATE MAILED: 06/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/092,067

Applicant(s)

DANIELS, MACHELLE

Examiner

Roz Maiorino

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 March 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

1. Claims 1-2,7-8, 11-14 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent Pub No. US 3826254 to Mellor.

Mellor teaches a tubing cuff for securing a tube with a layer of porous material a layer of layer of foam rubber secured to one side of the layer of porous; a reclosable fastener for securing distal needs of the cuff and a bendable adhesive layer having an adhesive attaché do the porous material.

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2. Claims 1- 12, 14 rejected under 35 U.S.C. 102(e) as being anticipated by US Patent NO 6645185 to (Bird et al).

Bird teaches a tubing cuff with a layer of porous material 12 a layer of foam rubber (plastic) 16 secured to one side of the layer porous material a closable fastener for securing distal ends of the cuff together, and a bendable adhesive layer 20 having an adhesive surface attached to the porous material on the opposite side to the layer of rubber/plastic. (Figures 1-10) where the fasteners comprise of hook and loop material. And the porous material is hypoallergenic.

3. Claims 1- 12, 14 rejected under 35 U.S.C. 102(b) as being anticipated by US Patent NO 5941856 to Kovacs et al

Kovacs teaches a tubing cuff with a layer of porous material 34 a layer of foam rubber (plastic) 36 secured to one side of the layer porous material a closable fastener for securing distal ends of the cuff together, and a bendable adhesive layer 28 having an adhesive surface attached to the porous material on the opposite side to the layer of rubber/plastic. (Figures 1-6) where the fasteners comprise of hook and loop material. And the porous material is hypoallergenic.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which

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said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4 and 6 rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Pub No. US 3826254 to Mellor as applied to claim1 above, and further in view of US Patent No.5342317 to Claywell.

As mentioned above Mellor teaches the invention except for the porous layer being hypoallergenic. However, it's very common in the art to use materials that are hypoallergenic to minimize the possible allergic response the patient might have to the product. Claywell teaches a tubing cuff with hypo-allergic layer.

Therefore it would have been obvious to one having ordinarily skill in the art to have used a hypo-allergic layer in for Mellor tubing cuff, because it minimizes the possible allergic response a patient might have to the tubing cuff.

4. Claims 5, 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent Pub No. US 3826254 to Mellor as applied to claim1 above, and further in view of US Patent No. US 5879335 to Martinez et al.

As mentioned above Mellor teaches the invention except for non woven loop with a durable backing layer. Martinez teaches no woven loop with a durable backing layer.

Therefore it would have been obvious to one having ordinarily skill in the art to have combined these teachings because according to Martinez it an easy to use, inexpensive and easy to disposes of device, and effective to secure a

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catheter tube to a body part or other object and to prevent unintentional displacement to an accompanying catheter. (Col.1, lines 45-50)

***Response to Arguments***

5. Applicant's arguments filed 3-24-2004 have been fully considered but they are not persuasive.

a. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., two Independent layer of different material, and the adhesive material used to secure IV tubing) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

b. Applicant claims that none of the prior art teaches a rubber, however as mentioned in the last office actions since the applicant has not defined rubber, or micro-porous material in his specification the examiner has taken the broadest interpretation of the both rubber and micro-porous material. Hence plastic is a type of rubber and most material are have micro pores.

c. Furthermore the applicant wishes the examiner to give weight to "cloth like material" however, "cloth like material" is not limiting at all, cloth like material could inclines many things.

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***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Roz Ghafoorian whose telephone number is 703-305-2336. The examiner can normally be reached on 8:30am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brian Casler can be reached on 703-308-3552. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.

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RG  
June 1, 2004

  
ANH TUAN T. NGUYEN  
PRIMARY EXAMINER  
